

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARLON E. PAGTAKHAN,

No. C 09-5495 SI (pr)

Petitioner,

v.

ED FOULK,

Respondent.

**ORDER DENYING PRELIMINARY
INJUNCTION; DIRECTING
PETITIONER TO SHOW CAUSE
WHY PETITION SHOULD NOT BE
DISMISSED AS MOOT**

On November 19, 2009, pro se petitioner Marlon Pagtakhan, a pretrial detainee involuntarily committed to Napa State Hospital pending a restoration of his competency to stand trial in San Mateo County Superior Court, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. His petition indicates that he was arrested on August 11, 2007, and arraigned shortly thereafter on charges of multiple counts of stalking, stalking with a prior conviction for stalking, and making criminal threats. Before the preliminary hearing was held, Pagtakhan's attorney declared a doubt about his competency. That eventually led to mental exams and a determination on October 24, 2007 that Pagtakhan was not competent to stand trial; he subsequently was committed to the California Department of Mental Health on November 16, 2007. See Petition Exhibits, Order Of Denial in In Re: Pagtakhan, San Mateo County Superior Court Case Nos. MH 463328A and HC 1973.

1 The instant petition alleges twenty claims that concern Pagtakhan's commitment, his
2 criminal case in San Mateo County Superior Court and various disputes he has with his alleged
3 victims. After reviewing the petition, the court determined that "[t]he only claims that may
4 proceed here are the claims pertaining to Pagtakhan's allegedly improper commitment to a
5 mental hospital pursuant to California Penal Code § 1370." Order of Partial Dismissal And To
6 Show Cause, p. 4. Pagtakhan now moves for a preliminary injunction preventing his transfer
7 from Napa State Hospital to the San Mateo County Sheriff's Office following the apparent
8 decision that his competency to stand trial had been restored. See Motion for Preliminary
9 Injunction Prohibiting Remand to Sheriff's Custody, pp. 1-4.

10 Under principles of comity and federalism, a federal court should not interfere with
11 ongoing state criminal proceedings by granting injunctive or declaratory relief absent
12 extraordinary circumstances. See Younger v. Harris, 401 U.S. 37, 43-54 (1971). Abstention
13 may be inappropriate in the "extraordinary circumstance" that: (1) the party seeking relief in
14 federal court does not have an adequate remedy at law and will suffer irreparable injury if denied
15 equitable relief, see Mockaitis v. Harclerod, 104 F.3d 1522, 1528 (9th Cir. 1997) (citing
16 Younger, 401 U.S. at 43-44); or (2) the state tribunal is incompetent by reason of bias, see
17 Gibson v. Berryhill, 411 U.S. 564, 577-79 (1973).

18 Extraordinary circumstances that might warrant federal intervention in state criminal
19 proceedings are not present here; Pagtakhan has shown no reason for this court to interfere with
20 the state's apparent determination that his competency to stand trial has been restored. For the
21 foregoing reasons, the motion for a preliminary injunction is DENIED. (Docket # 10.)

22 Further, in light of Pagtakhan's apparent restoration of competency, the court now must
23 determine if his petition has been rendered moot. Article III, § 2 of the United States
24 Constitution requires the existence of a case or controversy through all stages of federal judicial
25 proceedings. This means that throughout the litigation the party pursuing the action must have
26 suffered, or be threatened with, an actual injury which is traceable to the responding party, and
27 which is likely to be redressed by a favorable judicial decision. Lewis v. Continental Bank
28 Corp., 494 U.S. 472, 477 (1990).

1 For instance, an incarcerated convict's challenge to the validity of his conviction satisfies
2 the case or controversy requirement because the incarceration constitutes a concrete injury
3 caused by the conviction and redressable by the invalidation of the conviction. Spencer v.
4 Kemna, 523 U.S. 1, 7 (1998). Once the convict's sentence has expired, however, some concrete
5 and continuing injury other than the now-ended incarceration or parole – some “collateral
6 consequence” of the conviction – must exist if the suit is to be maintained and not considered
7 moot. Id.


8 Courts may presume that a criminal conviction has continuing collateral consequences.
9 See Spencer, 523 U.S. at 8–12; see also Evitts v. Lucey, 469 U.S. 387, 391 n.4 (1985) (accepting
10 as collateral consequence possibility that conviction may be used in future criminal proceeding
11 to enhance sentence). But a challenge to a prison sentence becomes moot once the sentence has
12 been served unless the petitioner can show that he continues to suffer collateral consequences.
13 See United States v. Palomba, 182 F.3d 1121, 1123 (9th Cir. 1999). This same rationale applies
14 to a challenge to the revocation of parole if the underlying sentence has expired, see Spencer,
15 523 U.S. at 14–18, or if the term imposed for violating parole has been served, see Cox v.
16 McCarthy, 829 F.2d 800, 803 (9th Cir. 1987) (claim moot because petitioner cannot be released
17 from term that he has already served for violating parole). Claims of detriment from the
18 revocation in a future parole or sentencing proceeding, impeachment in a future criminal or civil
19 proceeding, or use against the petitioner should he appear as a defendant in a future criminal
20 proceeding do not constitute sufficient proof of collateral consequences. See Spencer, 523 U.S.
21 at 14–16.

22 Here, of course, neither a criminal conviction nor a parole revocation is at issue. But
23 applying the general legal principles regarding the issue of mootness, the court finds that
24 Pagtakhan's pending challenge to his competency proceedings – now that his competency has
25 been restored – is comparable to a parolee's challenge to the validity of his revocation
26 proceedings once the underlying sentence has expired or the revocation term has been served.
27 That is, absent a showing of collateral consequences, Pagtakhan's challenge to his competency
28 proceedings is moot.

1 Accordingly, within thirty (30) days of the date of this order, Pagtakhan is ORDERED
2 TO SHOW CAUSE why the petition should not be dismissed as moot. The failure to do so will
3 result in the dismissal of the petition with prejudice. Respondent shall file an answer within
4 thirty (30) days of Pagtakhan's filing.

5 IT IS SO ORDERED.

6 DATED: November 30, 2010



SUSAN ILLSTON
United States District Judge

United States District Court
For the Northern District of California